

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 12, 2006

To: The Commission
(Meeting of June 15, 2006)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 440 (Speier) – Telecommunications: billing.**
As Amended June 8, 2006

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: No recommendation.

SUMMARY OF BILL:

SB 440 would require that phone bills include a lengthy detailed statement of subscribers' "billing error rights in cases of errors (unauthorized charges) or questions about your bill." Unauthorized charges are defined to include "charges incurred using a lost or stolen telecommunications device." SB 440 also describes ways a customer may establish a direct dial call was not authorized, and it prohibits a billing telephone company from requiring the subscriber to pay disputed charges while a cramming complaint investigation is pending.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

SB 440 is not needed to protect consumers and would generate unnecessary implementation costs. SB 440 would contravene the CPUC's policy position reflected in its Consumer Protection Initiative. The CPUC recognizes that often consumers are better served by the power of choice in a competitive wireless market, rather than through prescriptive regulation. SB 440 would impose prescriptive requirements that may be costly to implement, without any clear net benefit to California consumers.

SUMMARY OF SUGGESTED AMENDMENTS (if any):

None.

DIVISION ANALYSIS:

While no CPUC decision specifically addresses disclosure of a customer's potential liability for unauthorized charges, the CPUC determined in D.06-03-013 that existing statutory and regulatory provisions already give sufficient protection for consumers in the area of disclosure. The decision concluded that most consumer protection problems stem not from lack of laws or rules, but instead from lack of consumer knowledge of existing protections and issues with CPUC enforcement of existing laws and rules. As part of D.06-03-013, the CPUC correspondingly mandated numerous consumer-related initiatives, including ones focused on consumer education, enhanced enforcement, and fraud prevention. The CPUC staff is already undertaking to implement these initiatives.

Also the CPUC recently adopted new rules to protect against cramming, the placement of unauthorized charges on a consumer's phone bill. In D.06-03-013, we enacted provisions establishing (1) a telephone company may not bill subscribers for any unauthorized charge, even if the telephone company did not originate the charge; (2) the burden is on the carrier to establish authorization of a disputed charge; and (3) significant remedies are afforded to consumers who have been crammed. A cramming complaint investigation, as stipulated in our rules, must be resolved within thirty days of the date the carrier received the complaint. The rules dictate that while the complaint investigation is pending, a subscriber cannot be required to pay a disputed charge or any associated late charges or penalties. These provisions regarding payment of disputed charges are needlessly copied word-for word in proposed Section 2890(e)(2).

Given the adoption of new cramming rules and its launch of its new education and enforcement initiatives, the PUC determined that no further legal protections were needed to protect consumers against unauthorized charges. Thus any more laws or rules may be inefficient and may generate unnecessary consumer confusion and implementation costs. With respect to stolen phones in particular, additional specific protections may effectively result in all consumers having to enter a PIN or using an equivalent security measure before dialing a phone number. Without a record of such "affirmative user authorization," a consumer can successfully claim calls were unauthorized and refuse to pay any related charges. A better approach is found in the statute's existing language, which merely recognizes that a dialed call is prima facie evidence of authorization. As unnecessarily stated in proposed Section 2890(e)(2)(C), a subscriber, of course, may present persuasive evidence that establishes the call was not authorized; the statement that a dialed call is prima facie evidence merely means that under these circumstances the burden is on the subscriber to rebut the claim that the call was authorized.

PROGRAM BACKGROUND:

On March 2, 2006, the CPUC adopted Decision 06-03-013, which establishes market rules to empower telecommunications consumers and prevent fraud. D.06-03-013 states in part:

The purpose of this revised General Order is to chart a new regulatory role for the Commission in the face of swift technological advances; the convergence of voice, data, and video; and increasing competition in the telecommunications marketplace.

The Telecommunications Act of 1996 ("1996 Act") set the nation on a deregulatory path that encouraged competition at every level of the communications market. A central premise of that framework is the recognition that competitive markets provide the most effective consumer protection: the power of choice.

In the six years since this proceeding opened, the communications industry has undergone a profound transformation. The wireless telephone industry grew at such a rapid pace that by December of 2004 . . . the number of wireless subscriber lines in the United States surpassed the number of wireline subscriber lines.¹ In that same period, the first Internet-based Voice over Internet Protocol (VoIP) telephone companies made their appearance;² peer-to-peer software allowed free voice communications between any two computer users with broadband Internet access; major cable companies began offering cable-based voice telephony; and high speed advanced Internet service became accessible to ninety-five percent of U.S. households.³ Wireless telephones with service may be purchased at not only at carriers' retail outlets, but also at

¹ Total Universal Service Fund (USF) loops (subscriber or common lines that are jointly used for local exchange service and exchange access for state and interstate interexchange services) for California as of December 2003 was 21,519,678 for the Bell Companies. FCC Statistics of Communications Common Carriers, 2004/2005 Edition, Table 5.7 – Total USF Loops for All Local Exchange Companies (as of December 31, 2003). Wireless subscribers as of December 2003 in California numbered 20,360,454. FCC's 9th Annual Commercial Mobile Radio Services (CMRS) Competition Report, FCC 04-216, Table 2: FCC's Semi Annual Local Telephone Competition Survey. Wireless subscribers in California as of December 2004 numbered 23,457,761. FCC 10th Annual CMRS Competition Report, FCC 05-173, Table 2, FCC's Semi-Annual Local Telephone Competition Survey (September 30, 2005). In December 1999, wireless subscribers in California numbered 8,544,941. *Id.*

² Voice over Internet Protocol began in 1995 as a hobby of Israeli computer enthusiasts who could only communicate by computer. That year marked the first year Internet phone software was sold. In 1998, entrepreneurs began offering VOIP service for free if users listened to an ad at the beginning of the call. Only 1% of phone calls were made by VOIP in 1998. By the year 2000, 3% of calls were made via VOIP. By late 2006, it is expected that 24-40% of international traffic may be completed by VOIP. The History of Voice Over the Internet, by Van Theodorou, <http://ezinearticles.com/?The-History-of-Voice-over-Internet-Protocol&id=143336>.

³ At the end of 2004, the FCC reported that there was one high speed service subscriber in 95% of the nation's zip codes. The FCC's analysis indicates that 99% of the country's population lives in these zip codes. A "high-speed line" is defined as connections that deliver services at speeds exceeding 200 kilobits per second (kbps) in at least one direction. See FCC News Release, "FCC Releases Data on High-Speed Services for Internet Access," p. 2 (July 7, 2005).

neighborhood electronics stores, kiosks, and on the World Wide Web via dealers, agents, resellers, and electronic retailers.

Our traditional regulatory approach – which limited carriers in a monopoly or duopoly position to specific services and marketing practices – is ill-suited for this modern telecommunications marketplace. One-size-fits-all rules often cannot effectively address the significant degree of variation among technologies and business models currently employed by modern telecommunications companies, and may stifle innovation. Our traditional regulatory approach may inadvertently cause delay for the introduction of innovative services, beneficial rate plans, and deployment of new technology. It, therefore, is imperative that the Commission, whose regulatory tools were initially designed to regulate monopolies, periodically calibrate its rules to adjust to this newly competitive environment.

Additionally overly rigorous state regulations may inadvertently hinder advances in communications by imposing “a patchwork quilt” of fifty different state regulatory regimes on carriers who provide service in more than one state. For example, if various states require different billing formats, different font requirements on consumer bills, and different variations on promotional offers, this increases costs on the carriers, and these costs may be passed on to consumers.

Consequently we believe that we must proceed cautiously when considering the imposition of new regulations in this modern milieu. The Commission must be sure that any new rules that we adopt, or any existing rules that we extend to new market participants, address clear problems and are narrowly crafted. The rules that we adopt today are consistent with this regulatory philosophy.

LEGISLATIVE HISTORY:

Unknown.

FISCAL IMPACT:

None.

STATUS: This bill is set to be heard by the Assembly Utilities and Commerce Committee on June 26, 2006.

SUPPORT/OPPOSITION:

Unknown.

STAFF CONTACTS:

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Date: June 12, 2006

BILL LANGUAGE:

BILL NUMBER: SB 440 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JUNE 8, 2006
AMENDED IN ASSEMBLY MARCH 13, 2006
AMENDED IN ASSEMBLY JUNE 14, 2005
AMENDED IN ASSEMBLY JUNE 6, 2005
AMENDED IN SENATE MAY 2, 2005
AMENDED IN SENATE APRIL 21, 2005

INTRODUCED BY Senator Speier

FEBRUARY 17, 2005

An act to ~~add Article 6 (commencing with Section 2899) to Chapter 10 of Part 2 of Division 1 of the Public~~ amend Section 2980 of the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 440, as amended, Speier Telecommunications: ~~mobile data and mobile telephony services: charges for unauthorized services.— billing.~~

~~Under existing law, the Federal Communications Commission licenses and partially regulates providers of commercial mobile radio service, including providers of cellular radiotelephone service (cellular), broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR) services (collectively, mobile telephony service providers). Under existing law, no state or local government may regulate the entry of, or the rates charged by, any commercial mobile radio service, but a state or local government is generally not prohibited from regulating the other terms and conditions of commercial mobile radio service.~~

Existing law authorizes the Public Utilities Commission to regulate telecommunications services and rates of telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation, and to require telephone corporations to provide certain customer services. ~~Existing law requires a provider of mobile telephony services to provide subscribers with a means by which a subscriber can obtain reasonably current and available information on the subscriber's calling plan or plans and service usage.~~

~~This bill would require that providers of mobile data service, as defined, or mobile telephony service, as defined, give clear and conspicuous written notice of a subscriber's potential liability for any unauthorized use of the service and the means for a subscriber to notify the service provider in the event of theft or other loss of a mobile data or mobile telephony communications handset or other device. The bill would require that the written~~

~~disclosure contain a blank space for the customer to initial or sign, to acknowledge having been advised of their potential liability for unauthorized use of the service. The bill would limit a subscriber's liability for unauthorized use to usage occurring prior to notification of the service provider, not to exceed \$50. The bill would prohibit a mobile data or mobile telephony service provider from changing a subscriber's contract in a way that results in higher rates or charges or more restrictive terms or conditions, unless specified conditions are met.~~

Existing law specifically requires a person, corporation, or billing agent to provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber. Existing law establishes a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. Existing law requires the commission to require telephone corporations to provide customer service to telecommunication customers that includes, among other things, information concerning the regulatory process and how customers can participate in that process, including the process of resolving complaints.

This bill would establish specified ways for a subscriber to establish that a dialed call was not authorized. The bill would prohibit a billing telephone company, while a complaint investigation is pending, from requiring the subscriber to pay the disputed charge or any associated late charges or penalties, sending the disputed charge to collection, or making an adverse credit report based on nonpayment of the disputed charge. The bill would require a person, telephone corporation, or billing agent that provides a bill for telecommunications services to include with each bill a statement of the subscriber's rights if billed for unauthorized charges, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2890 of the Public Utilities Code is amended to read:

2890. (a) A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized.

(b) When a person or corporation obtains a written order for a product or service, the written order shall be a separate document from any solicitation material. The sole purpose of the document is to explain the nature and extent of the transaction. Written orders and written solicitation materials shall be unambiguous, legible, and in a minimum 10-point type. Written or oral solicitation materials used to obtain an order for a product or service shall be in the same language as the written order. Written orders ~~may~~ shall not be used as entry forms for sweepstakes, contests, or any other program that offers prizes or gifts.

(c) The commission may only permit a subscriber's local telephone service to be disconnected for nonpayment of charges relating to the

subscriber's basic local exchange telephone service, long-distance telephone service within a local access and transport area (intraLATA), long-distance telephone service between local access and transport areas (interLATA), and international telephone service.

(d) (1) A billing telephone company shall clearly identify, and use a separate billing section for, each person, corporation, or billing agent that generates a charge on a subscriber's telephone bill. A billing telephone company ~~may~~ shall

not bill for a person, corporation, or billing agent, unless that person, corporation or billing agent complies with paragraph (2).

(2) Any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill shall do all of the following:

(A) Include, or cause to be included, in the telephone bill the amount being charged for each product or service, including any taxes or surcharges, and a clear and concise description of the service, product, or other offering for which a charge has been imposed.

(B) Include, or cause to be included, for each entity that charges for a product or service, information with regard to how to resolve any dispute about that charge, including the name of the party responsible for generating the charge and a toll-free telephone number or other no cost means of contacting the entity responsible for resolving disputes regarding the charge and a description of the manner in which a dispute regarding the charge may be addressed. Each telephone bill shall include the appropriate telephone number of the commission that a subscriber may use to register a complaint.

(C) Establish, maintain, and staff a toll-free telephone number to respond to questions or disputes about its charges and to provide the appropriate addresses to which written questions or complaints may be sent. The person, corporation, or billing agent that generates a charge may also contract with a third party, including, but not limited to, the billing telephone corporation, to provide that service on behalf of the person, corporation, or billing agent.

(D) (i) Provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber.

~~In~~

(e) (1) In the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. ~~With~~

(2) With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. ~~If~~ A subscriber may establish that a dialed call was not authorized with any of the following:

(A) A record of lack of affirmative user authorization.

(B) A lack of a demonstrated pattern of knowledgeable past use.

(C) Other persuasive evidence of lack of authorization.

(3) While a complaint investigation is pending, the billing telephone company shall not do any of the following:

(A) Require the subscriber to pay the disputed charge or any associated late charges or penalties.

(B) Send the disputed charge to collection.

(C) Make an adverse credit report based on nonpayment of the disputed charge.

(f) If recurring charges arise from the use of those subscriber-initiated services, the recurring charges are subject to this section.

~~—(e)—~~

(g) If an entity responsible for generating a charge on a telephone bill receives a complaint from a subscriber that the subscriber did not authorize the purchase of the product or service associated with that charge, the entity, not later than 30 days from the date on which the complaint is received, shall verify the subscriber's authorization of that charge or undertake to resolve the billing dispute to the subscriber's satisfaction.

~~—(f) For purposes of this section, "billing agent" is the clearinghouse or billing aggregator.~~

~~—(g) — This section shall become operative on July 1, 2001.~~

(h) A person, corporation, or billing agent that provides a bill for telecommunications services shall provide with each bill a clear and conspicuous statement of a subscriber's rights if billed for unauthorized charges, conforming to the following statement:

"SUMMARY OF YOUR BILLING ERROR RIGHTS IN CASE OF ERRORS
(UNAUTHORIZED CHARGES) OR QUESTIONS ABOUT YOUR BILL

If you think any charge on your bill is wrong, or if you need more information about a transaction on your bill, call us at (toll free number) (the toll free number shown on your bill) or write us (on a separate sheet) as soon as possible at:

(address) (the address shown on your bill.)

In your telephone call or letter, give us all of the following information:

- (1) Your name and account number.
- (2) The dollar amount of the suspected error.
- (3) A description of the error. Explain, if you can, why you believe there is an error.
- (4) If you need more information, describe the item you are unsure about.

You do not have to pay the amount in question or any penalties or late charges connected to that amount while an investigation is pending, but you are still obligated to pay the parts of your bill that are not in question.

While an investigation is pending, we cannot make a negative credit report based on nonpayment of the disputed charge or take any action to collect the amount you question.

We will advise you of the results of our investigation within 30 days of the date on which the complaint is received.

If you call us, and we are unable to resolve your question, it is advisable to follow up by writing to us and keeping a copy of that correspondence.

If you are dissatisfied with our response, you may also file a complaint with the Public Utilities Commission by calling or writing to the Public Utilities Commission at:

(name, address, and telephone number of the Public Utilities Commission) (the address and number shown on your bill.)

You may also file a complaint with the Federal Communications

Commission by writing the Federal Communications Commission at:
(name and address)

You may have other legal rights in addition to the rights
explained here."

(i) As used in this section:

(1) "Billing agent" means the clearinghouse or billing aggregator.

(2) "Unauthorized charges" include charges incurred using a lost
or stolen telecommunications device.

~~SECTION 1. Article 6 (commencing with Section
2899) is added to Chapter 10 of Part 2 of Division 1 of the Public
Utilities Code, to read:~~

~~Article 6. Mobile Data and Mobile Telephony Services~~

~~2899. For purposes of this article, the following terms have the
following meanings:~~

~~(a) "Mobile data service" means the delivery of nonvoice
information to a mobile device and includes nonvoice information
communicated to a mobile telephony services handset, nonvoice
information communicated to handheld personal digital assistant (PDA)
devices and laptop computers, and paging carriers offering services
on pagers and two way messaging devices.~~

~~(b) "Mobile telephony service" means commercially available
interconnected mobile phone services that provide access to the
public switched telephone network (PSTN) via mobile communication
devices employing radiowave technology to transmit calls, including
cellular radiotelephone, broadband Personal Communications Services
(PCS), and digital Specialized Mobile Radio (SMR). "Mobile telephony
services" does not include mobile satellite services or mobile data
services used exclusively for the delivery of nonvoice information to
a mobile device.~~

~~(c) "Subscriber" means any individual or small commercial entity
that purchases or subscribes, or may potentially purchase or
subscribe, to any product or service provided or billed by a mobile
data service or mobile telephony service provider.~~

~~2899.1. (a) Every mobile data service or mobile telephony service
provider shall give clear and conspicuous written notice of a
subscriber's potential liability for any unauthorized use of the
service and the means for a subscriber to notify the service provider
in the event of theft or other loss of a mobile data or mobile
telephony communications handset or other device.~~

~~(b) The written disclosure required by subdivision (a), shall
contain a blank space for the customer to initial or sign, to
acknowledge having been advised of their potential liability for
unauthorized use of the service.~~

~~(c) A subscriber's liability for unauthorized use is limited to
usage occurring prior to notification of the service provider,
consistent with the written notice. In no event shall a subscriber's
liability exceed fifty dollars (\$50).~~

~~(d) (1) In any action brought by a mobile data service or mobile
telephony service provider, the service provider has the burden of
proof to establish that use of the service was authorized.~~

~~(2) In any action brought by a mobile data service or mobile
telephony service provider, to recover for services that were
unauthorized, the service provider has the burden of proof to
establish that the subscriber is responsible for the charges under~~

~~the agreement.~~

~~— 2899.2. (a) No mobile data or mobile telephony service provider shall change a subscriber's contract in a way that results in higher rates or charges or more restrictive terms or conditions, unless all of the following conditions are met:~~

~~— (1) The change is permitted by law.~~

~~— (2) The subscriber is provided with at least 30 calendar days prior written notice before the effective date of the change, during which time the subscriber may terminate service before the effective date of the change. The written notice shall include the following statement in at least 12 point bold face type: "The terms of your contract have changed." Following this heading shall be a clear, concise, and conspicuous statement explaining the change in the rate, charge, term, or condition in the subscriber's contract.~~

~~— (3) If the subscriber's contract contains any early termination fee or charge provision, any early termination fee or charge is waived and may not be collected by the service provider if the subscriber elects to terminate service pursuant to paragraph (2). If the subscriber's contract contains any early termination fee or charge, the prior written notice shall, in addition to the notice required in paragraph (2), include the following statement in at least 12 point bold fact type: "You have a right to terminate service without penalty." Following this heading shall be a clear, concise, and conspicuous statement explaining the number of days that the subscriber has to terminate service without incurring a fee or charge.~~

~~— (b) The requirements of subdivision (a) do not apply to either of the following:~~

~~— (1) When the subscriber initiates the request to change the terms or conditions of the contract, including a request for additional services not offered under the existing contract.~~

~~— (2) An increase in a tax or fee that the mobile data or mobile telephony service provider is required to collect from the subscriber and remit to a governmental entity.~~